

**CHAPTER 1049****CRIMINAL MISCHIEF AND UNAUTHORIZED COMPUTER ACCESS***S.F. 2098*

**AN ACT** relating to the criminal offenses of unauthorized computer access and criminal mischief, and providing a penalty.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 716.1, Code 2001, is amended to read as follows:

716.1 CRIMINAL MISCHIEF DEFINED.

Any damage, defacing, alteration, or destruction of ~~tangible~~ property is criminal mischief when done intentionally by one who has no right to so act.

Sec. 2. Section 716.6B, Code 2001, is amended to read as follows:

716.6B UNAUTHORIZED COMPUTER ACCESS.

1. A person who knowingly and without authorization accesses a computer, computer system, or computer network commits a simple misdemeanor ~~the following~~:

a. An aggravated misdemeanor if computer data is accessed that contains a confidential record, as defined in section 22.7, operational or support data of a public utility, as defined in section 476.1, operational or support data of a public airport, or a trade secret, as defined in section 550.2.

b. A serious misdemeanor if computer data is copied, altered, or deleted.

c. A simple misdemeanor for any access which is not an aggravated or serious misdemeanor.

2. The prosecuting attorney or an aggrieved person may institute civil proceedings against any person in district court seeking relief from conduct constituting a violation of this section or to prevent, restrain, or remedy such a violation.

Approved April 1, 2002

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**CHAPTER 1050****NONSUBSTANTIVE CODE CORRECTIONS***S.F. 2201*

**AN ACT** relating to nonsubstantive Code corrections and including effective and retroactive applicability provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 7E.5, subsection 1, paragraph h, Code 2001, is amended to read as follows:

h. The Iowa department of economic development, created in section 15.104 15.105, which has primary responsibility for programs for carrying out the economic development policies of the state.

Sec. 2. Section 10B.1, subsection 2, Code 2001, is amended to read as follows:

2. "Cooperative association" means any entity organized on a cooperative basis, including an association of persons organized under chapter 497, 498, or 499; an entity composed of entities organized under those chapters; or a cooperative ~~corporation~~ organized under chapter 501.

Sec. 3. Section 15A.7, subsection 3, Code 2001, is amended to read as follows:

3. That the employer shall agree to pay wages for the jobs for which the credit is taken of at least the average county wage or average regional wage, whichever is lower, as compiled annually by the department of economic development for the community economic betterment program. For the purposes of this section, the average regional wage shall be compiled based upon the service delivery areas in section 84B.2. Eligibility for the supplemental credit shall be based on a one-time determination of starting wages by the community college.

Sec. 4. Section 15A.9, subsection 10, Code Supplement 2001, is amended to read as follows:

10. LIMITATION ON ASSISTANCE. Economic development assistance under subsections 3 through 9 shall only be available to the primary business or a supporting business. However, if the department of economic development finds that a primary business or a supporting business has a record of violations of the law, including but not limited to environmental and worker safety statutes, rules, and regulations, over a period of time that tends to show a consistent pattern, the primary business or supporting business shall not qualify for economic development assistance under subsections 3 through 9, unless the department of economic development finds that the violations did not seriously affect public health or safety or the environment, or if it did that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether a primary business or a supporting business is eligible for economic development assistance under subsections 3 through 9, the department of economic development shall be exempt from chapter 17A.

Sec. 5. Section 15E.111, subsection 8, Code 2001, is amended to read as follows:

8. The department of economic development and the office of renewable fuels and coproducts shall prepare a report each six months detailing the progress of the department and other agencies provided in this section. The office of renewable fuels and coproducts, the department of natural resources, and Iowa state university may contribute a summary of their activities. The report shall be delivered to the secretary of the senate and the chief clerk of the house; the legislative service bureau; the chairpersons and ranking members of the senate standing committee on agriculture; the senate standing committee on small business, economic development, and tourism; the house of representatives standing committee on agriculture; and the house of representatives standing committee on ~~small business, economic development, and trade~~.

Sec. 6. Section 15E.117, Code 2001, is amended to read as follows:

15E.117 PROMOTION OF IOWA WINE AND BEER.

The department of economic development shall consult with the Iowa wine and beer promotion board on the best means to promote wine and beer made in Iowa. The department has the authority to contract with private persons for the promotion of beer and wine made in Iowa. At the direction of the department, the director of revenue and finance shall issue warrants to the department of economic development on the barrel tax fund created in section 123.143 and the wine gallonage tax fund created in section 123.183, which moneys may be used by the department for the purpose of this section, including administrative expenses incurred under this section.

Sec. 7. Section 15E.202, subsection 17, paragraph b, Code 2001, is amended to read as follows:

b. A cooperative ~~corporation~~ organized under chapter 501.

Sec. 8. Section 73.10, Code 2001, is amended to read as follows:

73.10 EXCEPTIONS.

The provisions of sections 73.6 to and 73.9 shall not apply to municipally owned and operated public utilities.

Sec. 9. Section 84A.1, subsections 2 and 3, Code 2001, are amended to read as follows:

2. The chief executive officer of the department of workforce development is the director who shall be appointed by the governor, subject to confirmation by the senate under the confirmation procedures of section 2.32. The director of the department of workforce development shall serve at the pleasure of the governor. The governor shall set the salary of the director within the applicable salary range established by the general assembly. The director shall be selected solely on the ability to administer the duties and functions granted to the director and the department and shall devote full time to the duties of the director. If the office of director becomes vacant, the vacancy shall be filled in the same manner as the original appointment was made.

The director of the department of workforce development shall, subject to the requirements of section 84A.1B, prepare, administer, and control the budget of the department and its divisions and shall approve the employment of all personnel of the department and its divisions.

The director of the department of workforce development shall direct the administrative and compliance functions and control the docket of the division of workers' compensation.

3. The department of workforce development shall include the division of labor services, the division of workers' compensation, and other divisions as appropriate.

Sec. 10. Section 84A.1A, Code Supplement 2001, is amended to read as follows:

84A.1A WORKFORCE DEVELOPMENT BOARD.

1. An Iowa workforce development board is created, consisting of nine voting members appointed by the governor and eight ex officio nonvoting members. The ex officio nonvoting members are four legislative members; one president or the president's designee of the university of northern Iowa, the university of Iowa, or Iowa state university of science and technology, designated by the state board of regents on a rotating basis; one representative from the largest statewide public employees' organization representing state employees; one president or the president's designee of an independent Iowa college, appointed by the Iowa association of independent colleges and universities; and one superintendent or the superintendent's designee of a community college, appointed by the Iowa association of community college presidents. The legislative members are two state senators, one appointed by the president of the senate, after consultation with the majority leader of the senate, and one appointed by the minority leader of the senate, after consultation with the president of the senate, from their respective parties; and two state representatives, appointed by the speaker after consultation with the majority and minority leaders of the house of representatives from their respective parties. Not more than five of the voting members shall be from the same political party. Of the nine voting members, one member shall represent a nonprofit organization involved in workforce development services, four members shall represent employers, and four members shall represent nonsupervisory employees. Of the members appointed by the governor to represent nonsupervisory employees, two members shall be from statewide labor organizations, one member shall be an employee representative of a labor management council, and one member shall be a person with experience in worker training programs. The governor shall consider recommendations from statewide labor organizations for the members representing nonsupervisory employees. The governor shall appoint the nine voting members of the workforce development board for a term of four years beginning and ending as provided by section 69.19, subject to confirmation by the senate, and the governor's appointments shall include persons knowledgeable in the area of workforce development.

2. A vacancy on the workforce development board shall be filled in the same manner as regular appointments are made for the unexpired portion of the regular term.

3. The workforce development board shall meet in May of each year for the purpose of elect-

ing one of its voting members as chairperson and one of its voting members as vice chairperson. However, the chairperson and the vice chairperson shall not be from the same political party. The workforce development board shall meet at the call of the chairperson or when any five members of the workforce development board file a written request with the chairperson for a meeting. Written notice of the time and place of each meeting shall be given to each member of the workforce development board. A majority of the voting members constitutes a quorum.

4. Members of the workforce development board, the director of the department of workforce development, and other employees of the department of workforce development shall be allowed their actual and necessary expenses incurred in the performance of their duties. All expenses shall be paid from appropriations for those purposes and the department of workforce development is subject to the budget requirements of chapter 8. Each member of the workforce development board may also be eligible to receive compensation as provided in section 7E.6.

5. If a member of the workforce development board has an interest, either direct or indirect, in a contract to which the department of workforce development is or is to be a party, the interest shall be disclosed to the workforce development board in writing and shall be set forth in the minutes of a meeting of the workforce development board. The member having the interest shall not participate in action by the workforce development board with respect to the contract. This subsection does not limit the right of a member of the workforce development board to acquire an interest in bonds, or limit the right of a member to have an interest in a bank or other financial institution in which the funds of the department of workforce development are deposited or which is acting as trustee or paying agent under a trust indenture to which the department of workforce development is a party.

Sec. 11. Section 84A.5, Code Supplement 2001, is amended to read as follows:

84A.5 DEPARTMENT'S DEPARTMENT OF WORKFORCE DEVELOPMENT — PRIMARY RESPONSIBILITIES.

The department of workforce development, in consultation with the workforce development board and the regional advisory boards, has the primary responsibilities set out in this section.

1. The department of workforce development shall develop and implement a workforce development system which increases the skills of the Iowa workforce, fosters economic growth and the creation of new high skill and high wage jobs through job placement and training services, increases the competitiveness of Iowa businesses by promoting high performance workplaces, and encourages investment in workers.

The workforce development system shall strive to provide high quality services to its customers including workers, families, and businesses. The department of workforce development shall maintain a common intake, assessment, and customer tracking system and to the extent practical provide one-stop services to customers at workforce development centers and other service access points.

The system shall include an accountability system to measure program performance, identify accomplishments, and evaluate programs to ensure goals and standards are met. The accountability system shall use information obtained from the customer tracking system, the department of economic development, the department of education, and training providers to evaluate the effectiveness of programs. The department of economic development, the department of education, and training providers shall report information concerning the use of any state or federal training or retraining funds to the department of workforce development in a form as required by the department of workforce development. The accountability system shall evaluate all of the following:

- a. The impact of services on wages earned by individuals.
- b. The effectiveness of training services providers in raising the skills of the Iowa workforce.
- c. The impact of placement and training services on Iowa's families, communities, and economy.

The department of workforce development shall make information from the customer track-

ing and accountability system available to the department of economic development, the department of education, and other appropriate public agencies for the purpose of assisting with the evaluation of programs administered by those departments and agencies and for planning and researching public policies relating to education and economic development.

2. The department of workforce development is responsible for administration of unemployment compensation benefits and collection of employer contributions under chapter 96, providing for the delivery of free public employment services established pursuant to chapter 96, other job placement and training programs established pursuant to section 84A.6, and the delivery of services located throughout the state.

3. The division of labor services is responsible for the administration of the laws of this state under chapters 88, 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 92, and 94A, and sections 30.7 and 85.68. The executive head of the division is the labor commissioner, appointed pursuant to section 91.2.

4. The division of workers' compensation is responsible for the administration of the laws of this state relating to workers' compensation under chapters 85, 85A, 85B, 86, and 87. The executive head of the division is the workers' compensation commissioner, appointed pursuant to section 86.1.

5. The director of the department of workforce development shall form a coordinating committee composed of the director of the department of workforce development, the labor commissioner, the workers' compensation commissioner, and other administrators. The committee shall monitor federal compliance issues relating to coordination of functions among the divisions.

6. The department of workforce development shall administer the following programs:

- a. The Iowa conservation corps established under section 84A.7.
- b. The workforce investment program established under section 84A.8.
- c. The statewide mentoring program established under section 84A.9.
- d. The workforce development centers established under chapter 84B.

7. The department of workforce development shall work with the department of economic development to incorporate workforce development as a component of community-based economic development.

8. The department of workforce development, in consultation with the applicable regional advisory board, shall select service providers, subject to approval by the workforce development board for each service delivery area. A service provider in each service delivery area shall be identified to coordinate the services throughout the service delivery area. The department of workforce development shall select service providers that, to the extent possible, meet or have the ability to meet the following criteria:

- a. The capacity to deliver services uniformly throughout the service delivery area.
- b. The experience to provide workforce development services.
- c. The capacity to cooperate with other public and private agencies and entities in the delivery of education, workforce training, retraining, and workforce development services throughout the service delivery area.
- d. The demonstrated capacity to understand and comply with all applicable state and federal laws, rules, ordinances, regulations, and orders, including fiscal requirements.

9. The department of workforce development shall provide access to information and documents necessary for employers and payors of income, as defined in sections 252D.16 and 252G.1, to comply with child support reporting and payment requirements. Access to the information and documents shall be provided at the central location of the department of workforce development and at each workforce development center.

10. The director of the department of workforce development may adopt rules pursuant to chapter 17A to charge and collect fees for enhanced or value-added services provided by the department of workforce development which are not required by law to be provided by the department and are not generally available from the department of workforce development. Fees shall not be charged to provide a free public labor exchange. Fees established by the director of the department of workforce development shall be based upon the costs of adminis-

tering the service, with due regard to the anticipated time spent, and travel costs incurred, by personnel performing the service. The collection of fees authorized by this subsection shall be treated as repayment receipts as defined in section 8.2.

Sec. 12. Section 84A.6, subsections 2 and 3, Code 2001, are amended to read as follows:

2. The director of the department of workforce development, in cooperation with the department of human services, shall provide job placement and training to persons referred by the department of human services under the promoting independence and self-sufficiency through employment job opportunities and basic skills program established pursuant to chapter 239B and the food stamp employment and training program.

3. The director of the department of workforce development, in cooperation with the department of human rights and the vocational rehabilitation services division of the department of education, shall establish a program to provide job placement and training to persons with disabilities.

Sec. 13. Section 84A.7, subsections 3 and 4, Code 2001, are amended to read as follows:

3. FUNDING. Corps projects shall be funded by appropriations to the Iowa conservation corps account and by cash, services, and material contributions made by other state agencies or local public and private agencies. Public and private entities who benefit from a corps project shall contribute at least thirty-five percent of the total project budget. The contributions may be in the form of cash, materials, or services. Materials and services shall be intended for the project and acceptable to the department of workforce development. Minimum levels of contributions shall be prescribed in rules adopted by the department of workforce development.

4. ACCOUNT CREATED. The Iowa conservation corps account is established within and administered by the department of workforce development. The account shall include all appropriations made to programs administered by the corps, and may also include moneys contributed by a private individual or organization, or a public entity for the purpose of implementing corps programs and projects. The department of workforce development may establish an escrow account within the department and obligate moneys within that escrow account for tuition payments to be made beyond the term of any fiscal year. Interest earned on moneys in the Iowa conservation corps account shall be credited to the account.

Sec. 14. Section 85.38, subsection 4, Code 2001, is amended to read as follows:

4. LIEN FOR HOSPITAL AND MEDICAL SERVICES UNDER CHAPTER 249A. In the event any hospital or medical services as defined provided in section 85.27 are paid by the state department of human services on behalf of an employee who is entitled to such benefits under the provisions of this chapter or chapter 85A or 85B, a lien shall exist as respects the right of such employee to benefits as described in section 85.27.

Sec. 15. Section 123.183, subsection 3, paragraph b, Code Supplement 2001, is amended to read as follows:

b. The remaining revenue collected from the wine gallonage tax on wine imported into this state for sale at wholesale and sold in this state at wholesale shall be deposited in the beer and liquor control fund created in section 123.53.

Sec. 16. Section 135.83, Code Supplement 2001, is amended to read as follows:

135.83 CONTRACTS FOR ASSISTANCE WITH ANALYSES, STUDIES, AND DATA.

In furtherance of the department's responsibilities under sections 135.76 and 135.78, the director may contract with the Iowa hospital association and third-party payers, the Iowa health care facilities association and third-party payers, or the Iowa association of homes for the aging and third-party payers for the establishment of pilot programs dealing with prospective rate review in hospitals or health care facilities, or both. Such contract shall be subject to the approval of the executive council and shall provide for an equitable representation of health care providers, third-party payers, and health care consumers in the determination of criterion

criteria for rate review. No third-party payer shall be excluded from positive financial incentives based upon volume of gross patient revenues. No state or federal funds appropriated or available to the department shall be used for any such pilot program.

Sec. 17. Section 135C.2, subsection 3, paragraph d, Code Supplement 2001, is amended to read as follows:

d. Notwithstanding the limitations set out in this subsection regarding rules for intermediate care facilities for persons with mental retardation, the department shall consider the federal interpretive guidelines issued by the federal ~~health care financing administration centers for Medicare and Medicaid services~~ when interpreting the department's rules for intermediate care facilities for persons with mental retardation. This use of the guidelines is not subject to the rulemaking provisions of sections 17A.4 and 17A.5, but the guidelines shall be published in the Iowa administrative bulletin and the Iowa administrative code.

Sec. 18. Section 135C.33, subsection 2, Code Supplement 2001, is amended to read as follows:

2. If the department of public safety determines that a person has committed a crime and is to be employed in a facility licensed under this chapter, the department of public safety shall notify the licensee that an evaluation, if requested by the facility, will be conducted by the department of human services to determine whether prohibition of the person's employment is warranted. If a department of human services child or dependent adult abuse records check ~~determines~~ shows that the person has a record of founded child or dependent adult abuse, the department of human services shall inform the licensee that an evaluation, if requested by the facility, will be conducted to determine whether prohibition of the person's employment is warranted.

Sec. 19. Section 136.3, subsection 7, Code Supplement 2001, is amended to read as follows:

7. Adopt, promulgate, amend, and repeal rules and regulations consistent with law for the protection of the public health and prevention of substance abuse, and for the guidance of the department. All rules which have been or are hereafter adopted by the department shall be subject to approval by the board. However, rules adopted by the commission on substance abuse for section 125.7, subsections 1 and 7, and rules adopted by the department pursuant to section 135.130 are not subject to approval by the state board of health.

Sec. 20. Section 207.13, subsection 2, Code 2001, is amended to read as follows:

2. The inspections by the division shall:

a. One Occur at a frequency of one complete inspection per calendar quarter and at least one partial inspection on an irregular basis in those months where a complete inspection is not performed.

b. Occur without prior notice to the permittee, agents or employees except for necessary on-site meetings with the permittee.

c. Include the filing of inspection reports adequate to enforce the requirements of and to carry out the terms and purposes of this chapter.

Sec. 21. Section 229.42, Code Supplement 2001, is amended to read as follows:

229.42 COSTS PAID BY COUNTY.

If a person wishing to make application for voluntary admission to a mental hospital established by chapter 226 is unable to pay the costs of hospitalization or those responsible for the person are unable to pay the costs, application for authorization of voluntary admission must be made through a single entry point process before application for admission is made to the hospital. The person's county of legal settlement shall be determined through the single entry point process and if the admission is approved through the single entry point process, the person's admission to a mental health hospital shall be authorized as a voluntary case. The authorization shall be issued on forms provided by the administrator. The costs of the hospitalization shall be paid by the county of legal settlement to the department of human services and

credited to the general fund of the state, ~~providing~~ provided that the mental health hospital rendering the services has certified to the county auditor of the county of legal settlement the amount chargeable to the county and has sent a duplicate statement of the charges to the department of human services. A county shall not be billed for the cost of a patient unless the patient's admission is authorized through the single entry point process. The mental health institute and the county shall work together to locate appropriate alternative placements and services, and to educate patients and family members of patients regarding such alternatives.

All the provisions of chapter 230 shall apply to such voluntary patients so far as is applicable.

The provisions of this section and of section 229.41 shall apply to all voluntary inpatients or outpatients receiving mental health services either away from or at the institution receiving mental health services.

If a county fails to pay the billed charges within forty-five days from the date the county auditor received the certification statement from the superintendent, the department of human services shall charge the delinquent county the penalty of one percent per month on and after forty-five days from the date the county received the certification statement until paid. The penalties received shall be credited to the general fund of the state.

Sec. 22. Section 232.21, subsection 4, Code Supplement 2001, is amended to read as follows:

4. A child placed in a shelter care facility under this section shall not be held for a period in excess of forty-eight hours without an oral or written court order authorizing the shelter care. When the action is authorized by an oral court order, the court shall enter a written order before the end of the next day confirming the oral order and indicating the reasons for the order. A child placed in shelter care pursuant to section 232.19, subsection 1, paragraph "c", shall not be held in excess of seventy-two hours in any event. If deemed appropriate by the court, an order authorizing shelter care placement may include a determination that continuation of the child in the child's home is contrary to the child's welfare and that reasonable efforts as defined in section 232.57 have been made. The inclusion of such a determination shall not under any circumstances be deemed a prerequisite for entering an order pursuant to this section. However, the inclusion of such a determination, supported by the record, may be used by the department to assist the department in obtaining federal funding for the child's placement.

Sec. 23. Section 232.111, subsection 2, paragraph a, subparagraph (3), Code Supplement 2001, is amended to read as follows:

(3) The child is less than twelve months of age and has been judicially determined to ~~meet the definition of abandonment of a child~~ have been abandoned or the child is a newborn infant whose parent has voluntarily released custody of the child in accordance with chapter 233.

Sec. 24. Section 249A.19, Code 2001, is amended to read as follows:

249A.19 HEALTH CARE FACILITIES — PENALTY.

The department shall adopt rules pursuant to chapter 17A to assess and collect, with interest, a civil penalty for each day a health care facility which receives medical assistance reimbursements does not comply with the requirements of the federal Social Security Act, section 1919, as codified in 42 U.S.C. § 1396r. A civil penalty shall not exceed the amount authorized under 42 C.F.R. § 488.438 for health care facility violations. Any moneys collected by the department pursuant to this section shall be applied to the protection of the health or property of the residents of the health care facilities which are determined by the state or by the federal ~~health care financing administration~~ centers for Medicare and Medicaid services to be out of compliance. The purposes for which the collected moneys shall be applied may include payment for the costs of relocation of residents to other facilities, maintenance or operation of a health care facility pending correction of deficiencies or closure of the facility, and reimbursing residents for personal funds lost. If a health care facility is assessed a civil penalty under this section, the health care facility shall not be assessed a penalty under section 135C.36 for the same violation.



Sec. 25. Section 249A.27, subsection 2, Code 2001, is amended to read as follows:

2. If the department is the case management contractor, the state shall be responsible for any costs included within the unit rate for case management services which are disallowed for medical assistance reimbursement by the federal health care financing administration centers for Medicare and Medicaid services. The contracting county shall be credited for the county's share of any amounts overpaid due to the disallowed costs. However, if certain costs are disallowed due to requirements or preferences of a particular county in the provision of case management services, the county shall not receive credit for the amount of the costs.

Sec. 26. Section 249H.4, subsection 4, Code 2001, is amended to read as follows:

4. The trust fund shall be operated in accordance with the guidelines of the health care financing administration centers for Medicare and Medicaid services of the United States department of health and human services. The trust fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. The moneys in the trust fund shall not be considered revenue of the state, but rather shall be funds of the senior living program. The moneys in the trust fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except to provide for the purposes of this chapter.<sup>2</sup> Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the trust fund shall be credited to the trust fund.

Sec. 27. Section 249H.8, subsection 1, Code 2001, is amended to read as follows:

1. A person operating a PACE program shall have a PACE program agreement with the health care financing administration centers for Medicare and Medicaid services of the United States department of health and human services, shall enter into a contract with the department of human services, and shall comply with 42 U.S.C. § 1396(u)(4) and all regulations promulgated pursuant to that section.

Sec. 28. Section 263.9, Code Supplement 2001, is amended to read as follows:

263.9 ESTABLISHMENT AND OBJECTIVES.

The state board of regents is hereby authorized to establish and maintain in reasonable proximity to Iowa City and in conjunction with the state university of Iowa and the university hospital hospitals and clinics, a center for disabilities and development having as its objects the education and treatment of children with severe disabilities. The center shall be conducted in conjunction with the activities of the university of Iowa children's hospital. Insofar as is practicable, the facilities of the university children's hospital shall be utilized.

Sec. 29. Section 263.10, Code Supplement 2001, is amended to read as follows:

263.10 PERSONS ADMITTED.

Every resident of the state who is not more than twenty-one years of age, who has such severe disabilities as to be unable to acquire an education in the common schools, and every such person who is twenty-one and under thirty-five years of age who has the consent of the state board of regents, shall be entitled to receive an education, care, and training in the university of Iowa hospitals and clinics center for disabilities and development, and nonresidents similarly situated may be entitled to an education and care at the center upon such terms as may be fixed by the state board of regents. The fee for nonresidents shall be not less than the average expense of resident pupils and shall be paid in advance. Residents and persons under the care and control of a director of a division of the department of human services who have severe disabilities may be transferred to the center upon such terms as may be agreed upon by the state board of regents and the director.

Sec. 30. Section 263.13, Code Supplement 2001, is amended to read as follows:

263.13 GIFTS ACCEPTED.

The state board of regents is authorized to accept, for the benefit of the university hospitals and clinics center for disabilities and development, gifts, devises, or bequests of property, real

<sup>2</sup> See 2002 Iowa Acts, Second Extraordinary Session, chapter 1001, §30, 52 herein

or personal including grants from the federal government. The state board of regents may exercise such powers with reference to the management, sale, disposition, investment, or control of property so given, devised, or bequeathed, as may be deemed essential to its preservation and the purposes for which made. No contribution or grant shall be received or accepted if any condition is attached as to its use or administration other than it be used for aid to the center as provided in this division.

Sec. 31. Section 317.25, Code Supplement 2001, is amended to read as follows:

317.25 TEASEL, MULTIFLORA ROSE, AND PURPLE LOOSESTRIPE PROHIBITED — EXCEPTIONS.

A person shall not import, sell, offer for sale, or distribute teasel (*Dipsacus*) biennial, the multiflora rose (~~rosa~~ Rosa multiflora), purple loosestrife (~~lythrum~~ Lythrum salicaria), purple loosestrife (~~lythrum~~ Lythrum virgatum), or seeds of them in any form in this state. However, this section does not prohibit the sale, offer for sale, or distribution of the multiflora rose (~~rosa~~ Rosa multiflora) used for understock for either cultivated roses or ornamental shrubs in gardens. Any person violating the provisions of this section is subject to a fine of not exceeding one hundred dollars.

Sec. 32. Section 321.20B, subsection 4, paragraph b, subparagraph (2), subparagraph subdivisions (a) and (b), Code Supplement 2001, are amended to read as follows:

(a) Sign an admission of violation on the citation and remit to the clerk of court a scheduled fine as provided in section ~~805.8~~ 805.8A, subsection 2 ~~14~~, paragraph "f", for a violation of subsection 1. Upon payment of the fine to the clerk of court of the county where the citation was issued, payment of a fifteen dollar administrative fee to the county treasurer of the county in which the motor vehicle is registered, and providing proof of payment of any applicable fine and proof of financial liability coverages to the county treasurer of the county in which the motor vehicle is registered, the treasurer shall issue new license plates and registration to the owner.

(b) Request an appearance before the court on the matter. If the matter goes before the court, and the owner or driver is found guilty of a violation of subsection 1, the court may impose a fine as provided in section ~~805.8~~ 805.8A, subsection 2 ~~14~~, paragraph "f", for a violation of subsection 1, or the court may order the person to perform unpaid community service instead of the fine. Upon the payment of the fine or the entry of the order for unpaid community service, the person shall provide proof of payment or entry of such order and the county treasurer of the county in which the motor vehicle is registered shall issue new license plates and registration to the owner upon the owner providing proof of financial liability coverage and paying a fifteen dollar administrative fee to the county treasurer.

Sec. 33. Section 321.215, subsection 2, unnumbered paragraph 1, Code Supplement 2001, is amended to read as follows:

Upon conviction and the suspension or revocation of a person's noncommercial driver's license under section 321.209, subsection 5 or 6; section 321.210; 321.210A; or 321.513; or upon revocation pursuant to a court order issued under section 901.5, subsection 10; or upon the denial of issuance of a noncommercial driver's license under section 321.560, based solely on offenses enumerated in section 321.555, subsection 1, paragraph "c", or section 321.555, subsection 2; or a juvenile, whose license has been suspended or revoked pursuant to a dispositional order under section 232.52, subsection 2, paragraph "a", for a violation of chapter 124 or 453B, or section 126.3, a person may petition the district court having jurisdiction ~~for over~~ the residence of the person for a temporary restricted license to operate a motor vehicle for the limited purpose or purposes specified in subsection 1. The petition shall include a current certified copy of the petitioner's official driving record issued by the department. The application may be granted only if all of the following criteria are satisfied:

Sec. 34. Section 321L.3, unnumbered paragraph 3, Code Supplement 2001, is amended to read as follows:

Persons with disabilities parking permits may be returned to the department as required by this section ~~either directly to the department, to a driver's license station, or to~~ any law enforcement office.

Sec. 35. Section 422.11C, subsection 1, paragraph b, Code Supplement 2001, is amended to read as follows:

b. "Gasoline" means gasoline that meets the specifications required by the department of agriculture and land stewardship pursuant to section 214A.2 and that is dispensed through a metered pump.

Sec. 36. Section 426B.5, subsection 1, paragraph c, unnumbered paragraph 1, Code Supplement 2001, is amended to read as follows:

Moneys available in the per capita expenditure pool for a fiscal year shall be distributed to those counties ~~who~~ that meet all of the following eligibility requirements:

Sec. 37. Section 437A.15, subsection 3, paragraph c, Code Supplement 2001, is amended to read as follows:

c. If paragraph "b" is applicable, on or before August 1, the director shall notify each distribution electric cooperative member, each municipal utility purchasing member, and each generation and transmission electric cooperative of the amount of electric delivery replacement tax to ~~pay~~ be paid to the generation and transmission electric cooperative. On or before August 1, the director shall notify the generation and transmission electric cooperative of the amount of replacement tax liability attributable to the excess property tax liability that is payable to each county treasurer. The director shall determine the amount of any special utility property tax levy or tax credit attributable to the excess property tax liability which shall be reflected in the amount required to be paid by each distribution electric cooperative member and each municipal utility purchasing member to the generation and transmission electric cooperative.

Sec. 38. Section 450.4, subsection 4, Code Supplement 2001, is amended to read as follows:

4. ~~Bequests~~ On bequests for the care and maintenance of the cemetery or burial lot of the decedent or the decedent's family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in the testator's last will.

Sec. 39. Section 452A.2, subsection 18, paragraphs a and b, Code Supplement 2001, are amended to read as follows:

a. All products commonly or commercially known or sold as gasoline, including ethanol blended gasoline, casinghead, and absorption or natural gasoline, regardless of ~~their~~ the products' classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

b. Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles which, when subjected to distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society of Testing Materials Designation society for testing and materials designation D-86), shows not less than ten per centum distilled (recovered) below three hundred forty-seven degrees Fahrenheit (one hundred seventy-five degrees Centigrade) and not less than ninety-five per centum distilled (recovered) below four hundred sixty-four degrees Fahrenheit (two hundred forty degrees Centigrade).

Sec. 40. Section 452A.2, subsection 20, Code Supplement 2001, is amended to read as follows:

20. "Racing fuel" means leaded gasoline of one hundred ten octane or more that does not meet American society of for testing and materials designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

Sec. 41. Section 455B.484, subsection 3, Code Supplement 2001, is amended to read as follows:

3. Administer and coordinate the land quality and waste management trust fund created under this part.

Sec. 42. Section 455G.3, subsection 6, unnumbered paragraph 1, Code Supplement 2001, is amended to read as follows:

There is appropriated from the unassigned revenue fund administered by the Iowa comprehensive petroleum underground storage tank fund board to the following funds for the fiscal year beginning July 1, 2001, and ending June 30, 2002, the following amounts as specified:

Sec. 43. Section 462A.15, subsection 2, Code Supplement 2001, is amended to read as follows:

2. ~~The provisions of subsections 1 and 2 of this section do~~ This section does not apply to a performer engaged in a professional exhibition or a person or persons engaged in a professional exhibition or a person or persons engaged in an activity authorized under section 462A.16.

Sec. 44. Section 505.11, Code Supplement 2001, is amended to read as follows:  
505.11 REFUNDS.

Whenever it appears to the satisfaction of the commissioner of insurance that, because of error, mistake, or erroneous interpretation of statute, ~~that~~ a foreign or domestic insurance corporation has paid to the state of Iowa taxes, fines, penalties, or license fees in excess of the amount legally chargeable against it, the commissioner of insurance shall have power to refund to such corporation any such excess by applying the amount of the excess payment toward the payment of taxes, fines, penalties, or license fees already due or which may become due, until such excess payments have been fully refunded.

Sec. 45. Section 514I.3, subsection 3, Code 2001, is amended to read as follows:

3. The department of human services is designated to receive the state and federal funds appropriated or provided for the program, and to submit and maintain the state plan for the program, which is approved by the health care financing administration centers for Medicare and Medicaid services of the United States department of health and human services.

Sec. 46. Section 518A.35, Code Supplement 2001, is amended to read as follows:  
518A.35 ANNUAL TAX.

A state mutual insurance association doing business under this chapter shall on or before the first day of March, each year, pay to the director of ~~the department of~~ revenue and finance, or a depository designated by the director, a sum equivalent to two percent of the gross receipts from premiums and fees for business done within the state, including all insurance upon property situated in the state without including or deducting any amounts received or paid for reinsurance. However, a company reinsuring windstorm or hail risks written by county mutual insurance associations is required to pay a two percent tax on the gross amount of reinsurance premiums received upon such risks, but after deducting the amount returned upon canceled policies and rejected applications covering property situated within the state, and dividends returned to policyholders on property situated within the state.

Sec. 47. Section 522B.3, subsection 2, unnumbered paragraph 1, Code Supplement 2001, is amended to read as follows:

A license as an insurance producer shall not be required of any of the following:

Sec. 48. Section 522B.6, subsection 2, paragraph e, Code Supplement 2001, is amended to read as follows:

e. Variable life and variable annuity products insurance ~~providing~~ coverage provided under variable life insurance contracts and variable annuities.

Sec. 49. Section 522B.16, unnumbered paragraph 1, Code Supplement 2001, is amended to read as follows:

An insurance producer shall report to the commissioner any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent to the order, ~~or~~ and other relevant legal documents.

Sec. 50. Section 523A.901, subsection 9, paragraph g, Code Supplement 2001, is amended to read as follows:

g. The court shall have summary jurisdiction ~~of~~ in a proceeding by a liquidator to hear and determine the rights of the parties under this section. Reasonable notice of hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, upon application of any party in interest, the court shall in the same proceeding ascertain the value of the property or lien. If the value is less than the amount for which the property is indemnified or less than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within the time as fixed by the court.

Sec. 51. Section 614.1, subsection 2A, paragraph b, Code 2001, is amended to read as follows:

b. (1) The fifteen-year limitation in paragraph "a" shall not apply to the time period in which to discover a disease that is latent and caused by exposure to a harmful material, in which event the cause of action shall be deemed to have accrued when the disease and such disease's cause have been made known to the person or at the point the person should have been aware of the disease and such disease's cause. This subsection shall not apply to cases governed by section 614.1, subsection 11 of this section.

(2) As used in this paragraph, "harmful material" means ~~silicon~~ silicone gel breast implants, which were implanted prior to July 12, 1992; and chemical substances commonly known as asbestos, dioxins, tobacco, or polychlorinated biphenyls, whether alone or as part of any product; or any substance which is determined to present an unreasonable risk of injury to health or the environment by the United States environmental protection agency pursuant to the federal Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., or by this state, if that risk is regulated by the United States environmental protection agency or this state.

Sec. 52. Section 672.1, subsection 2, Code Supplement 2001, is amended to read as follows:

2. A gleaner, or a restaurant, food establishment, food service establishment, school, manufacturer of foodstuffs, meat ~~and or~~ poultry establishment licensed pursuant to chapter 189A, or other person who, in good faith, donates food to a charitable or nonprofit organization for ultimate free distribution to needy individuals is not subject to criminal or civil liability arising from the condition of the food if the donor reasonably inspects the food at the time of the donation and finds the food fit for human consumption. The immunity provided by this subsection does not extend to a donor or gleaner if damages result from the negligence, recklessness, or intentional misconduct of the donor, or if the donor or gleaner has, or should have had, actual or constructive knowledge that the food is tainted, contaminated, or harmful to the health or well-being of the ultimate recipient.

Sec. 53. Section 713.6A, subsection 2, Code Supplement 2001, is amended to read as follows:

2. Burglary in the third degree involving a burglary of an unoccupied motor vehicle or motor truck as defined in section 321.1, or a vessel defined in section 462A.2, is an aggravated misdemeanor for a first offense. A second or subsequent conviction under this ~~section~~ subsection is punishable under subsection 1.

Sec. 54. Section 713.6B, subsection 2, Code Supplement 2001, is amended to read as follows:

2. Attempted burglary in the third degree involving an attempted burglary of an unoccupied motor vehicle or motor truck as defined in section 321.1, or a vessel defined in section 462A.2, is a serious misdemeanor for a first offense. A second or subsequent conviction under this ~~section~~ subsection is punishable under subsection 1.

Sec. 55. Section 902.9, unnumbered paragraph 2, Code Supplement 2001, is amended to read as follows:

The criminal penalty surcharge required by sections 911.2 and 911.3 shall be added to a fine imposed on a class "C" or class "D" felon, as provided by ~~that section~~ those sections, and is not a part of or subject to the maximums set in this section.

Sec. 56. Section 907.3, subsection 1, paragraph m, Code Supplement 2001, is amended to read as follows:

m. The ~~offense sentence~~ is for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

Sec. 57. Section 907.3, subsection 2, paragraph g, Code Supplement 2001, is amended to read as follows:

g. The ~~offense sentence~~ is for a determinate term of confinement or an additional indeterminate term of years as provided in section 902.3A.

#### 2001 IOWA ACTS AMENDMENTS

Sec. 58. Section 542D.4, subsection 1, as enacted by 2001 Iowa Acts, chapter 55, section 4, is amended to read as follows:

1. An Iowa accountancy examining board is created within the professional licensing and regulation division of the department of commerce to administer and enforce this chapter. The board shall consist of eight members, appointed by the governor and subject to senate confirmation, all of whom shall be residents of this state. Five of the eight members shall be holders of certificates issued under section 542D.6, one member shall be the holder of a license issued under section 542D.8, and two shall not be certified public accountants or licensed public accountants and shall represent the general public. ~~Not fewer than~~ At least three of the holders of certificates issued under section 542D.6 shall also be qualified to supervise attest services as provided in section 542D.7. A certified or licensed member of the board shall be actively engaged in practice as a certified public accountant or as a licensed public accountant and shall have been so engaged for five years preceding appointment, the last two of which shall have been in this state. Professional associations or societies composed of certified public accountants or licensed public accountants may recommend the names of potential board members to the governor. However, the governor is not bound by the recommendations. A board member is not required to be a member of any professional association or society composed of certified public accountants or licensed public accountants. The term of each member of the board shall be three years, as designated by the governor, and appointments to the board are subject to the requirements of sections 69.16, 69.16A, and 69.19. Members of the board appointed and serving pursuant to chapter 542C, Code 2001, on the effective date of this Act shall serve out the terms for which they were appointed. Vacancies occurring during a term shall be filled by appointment by the governor for the unexpired term. Upon the expiration of the member's term of office, a member shall continue to serve until a successor shall have

been appointed and taken office. The public members of the board shall be allowed to participate in administrative, clerical, or ministerial functions incident to giving the examinations, but shall not determine the content or determine the correctness of the answers. The licensed public accountant member shall not determine the content of the certified public accountant examination or determine the correctness of the answers. Any member of the board whose certificate under section 542D.6 or license under section 542D.8 is revoked or suspended shall automatically cease to be a member of the board, and the governor may, after a hearing, remove any member of the board for neglect of duty or other just cause. A person who has served three successive complete terms shall not be eligible for reappointment, but appointment to fill an unexpired term shall not be considered a complete term for this purpose.

Sec. 59. Section 257.14, subsection 1, Code 2001, as amended by 2001 Iowa Acts, chapter 126, section 9, is amended to read as follows:

1. For the budget year commencing July 1, 2001, if the department of management determines that the regular program district cost of a school district for a budget year is less than the total of the regular program district cost plus any adjustment added under this section for the base year for that school district, the school district shall be eligible to receive a budget adjustment for that district for that budget year up to an amount equal to the difference. The board of directors of a school district that wishes to receive a budget adjustment pursuant to this subsection shall, notwithstanding the public notice and hearing provisions of chapter 24 or any other provision to the contrary, within thirty days following the effective date of this section of this Act, adopt a resolution to receive the budget adjustment and immediately notify the department of management of the adoption of the resolution and the amount of the budget adjustment to be received.

Sec. 60. 2001 Iowa Acts, chapter 153, section 16, is amended to read as follows:

SEC. 16. Sections 103A.9, 135I.4, 306C.10, 321.251, 331.301, 335.30, 414.28, 422.42, 427.1, 435.22, 435.23, 435.24, 435.26, 435.27, 435.28, 435.34, 435.35, 441.17, 555B.1, 555C.2, 555C.3, 555C.4, 557B.1, 562B.1, 562B.13, 562B.14, 562B.15, 562B.16, 562B.17, 562B.18, 562B.19, 562B.22, 562B.23, 562B.24, 562B.32, 648.22A, and 648.22B, Code 2001, are amendeded by inserting before the words "mobile home park" or "park" the words "manufactured home community or".

Sec. 61. 2001 Iowa Acts, chapter 183, section 20, the amending clause, is amended to read as follows:

Section ~~169.4~~ 169A.4, Code 2001, is amended to read as follows:

Sec. 62. 2001 Iowa Acts, chapter 185, section 48, subsection 2, is amended to read as follows:

2. Until bond proceeds are received by the tobacco settlement authority and deposited in the tax-exempt bond proceeds restricted capital funds account of the tobacco settlement trust fund, payments for costs incurred for projects for which appropriations are made in section 25 ~~of this division~~ of this Act may be made from the rebuild Iowa infrastructure fund. Upon receipt of bond proceeds and deposit of the proceeds in the tax-exempt bond proceeds restricted capital funds account, such payments shall be reimbursed to the rebuild Iowa infrastructure fund from the tax-exempt bond proceeds restricted capital funds account, subject, however, to any applicable limitations on the use of the proceeds as provided in the Internal Revenue Code and this Act.

Sec. 63. 2001 Iowa Acts, chapter 189, section 11, is amended by striking the section and inserting in lieu thereof the following:

SEC. 11. Section 304.13A, subsection 1, Code 2001, is amended to read as follows:

1. An agency ~~required to compile and maintain a report, which produces or makes available for public inspection written reports or newsletters~~ on and after July 1, 2001, shall maintain such report ~~or newsletter~~ in an electronic form, giving consideration to the standards for electronic records recommended by the information technology department. Such agency, by

itself, or with the assistance of the information technology department, shall also make the report or newsletter accessible to the public through the internet as provided in subsection 2 and through other electronic means.

Sec. 64. 2001 Iowa Acts, chapter 189, is amended by adding the following new section:

NEW SECTION. SEC. 11A. Section 304.13A, subsection 2, unnumbered paragraph 1, Code 2001, is amended to read as follows:

A copy of all required agency reports or newsletters maintained pursuant to subsection 1 shall be located at an internet site maintained by the information technology department in consultation with the state librarian, and all required such reports or newsletters shall be placed on electronic media. The state librarian shall provide for the distribution of such copies to a public library in this state requesting such copy.

Sec. 65. EFFECTIVE DATES — RETROACTIVE APPLICABILITY.

1. The section of this Act amending section 257.14, subsection 1, as amended by 2001 Iowa Acts, chapter 126, section 9, takes effect upon enactment and is retroactively applicable to May 9, 2001.

2. The section of this Act amending 2001 Iowa Acts, chapter 153, section 16, 2001 Iowa Acts, chapter 183, section 20, and 2001 Iowa Acts, chapter 189, section 11, and amending 2001 Iowa Acts, chapter 189, by adding a new section take effect upon enactment and are retroactively applicable on and after July 1, 2001.

Approved April 1, 2002

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## CHAPTER 1051

### JAILS AND LOCAL OR REGIONAL CONFINEMENT FACILITIES — SPACE AND NEEDS INVENTORY

S.F. 2278

**AN ACT** relating to analyzing the confinement and detention needs of jails, and other local or regional confinement facilities, and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. 356.36A CONFINEMENT AND DETENTION REPORT — DESIGN PROPOSALS.

The division of criminal and juvenile justice planning of the department of human rights, in consultation with the department of corrections, the Iowa county attorneys association, the Iowa state sheriff's association, the Iowa association of chiefs of police and peace officers, a statewide organization representing rural property taxpayers, the Iowa league of cities, and the Iowa board of supervisors association, shall prepare a report analyzing the confinement and detention needs of jails and facilities established pursuant to chapter<sup>1</sup> 356A. The report for each type of jail or facility shall include but is not limited to an inventory of prisoner space, daily prisoner counts, options for detention of prisoners with mental illness or substance abuse service needs, and the compliance status under section 356.36 for each jail or facility. The report shall contain an inventory of recent jail or facility construction projects in which voters have approved the issuance of general obligation bonds, essential county purpose bonds, revenue bonds, or bonds issued pursuant to chapter 422B. The report shall be revised periodically

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<sup>1</sup> See chapter 1175, §83 herein